HAND BOOK OF COMMERCIAL LAW

BY

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ADVOCATE.

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PREFACE.

In this small volume setting forth the essential principles of commercial law, the author's only design is to supply those preparing for business, as well as those already engaged in business, with a book which will enable them to understand its laws, and thus protect their interests in all commercial transactions wherein they might be parties.

Respectfully,

F. CAMPBELL.

Sherbrooke, 21 Dec. 1886.

INTRODUCTION.

Commercial Law is that part of the law which regulates commercial transactions; it grew out of the customs and necessities of business.

It is unnecessary to state that the knowledge of the principles of this part of the law is of the highest importance to all classes of men, and especially to business men.

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CHAPTER I.

CONTRACTS.

The first thing in commercial law which calls for our attention is the contract, which is defined as " an agreement either written or " verbal upon sufficient consideration to do or " not to do a particular thing."

ELEMENTS.—According to the Civil Code of the Province of Quebec, four elements are required for the validity of a contract:

1o. Parties legally capable of contracting;

2o. Such parties' consent or mutual assent legally given;

3o. A subject matter of the contract;

4o. A lawful consideration or matter upon which the consent or mutual assent reposes.

PARTIES.—Every contract requires two or more competent parties. Are competent to contract all those not excepted by law, are so excepted:

1o. Minors, that is, persons who have not yet reached the age of twenty-one years. Art-

icle 1005 of our Code makes an exception to this rule, and says: that minors carrying on business as bankers, traders or mechanics are, when acting as such, capable of being parties to a contract, as fully as persons having attained majority, being in this case subject to the same obligations and being entitled to no more relief, even where their interests might suffer or be endangered. I will remark here, that it is not the spirit of the law that minors should be debarred of the right of contracting; for it is a well known fact, as well as an accepted principle of law, that minors may not only enter into contracts or agreements, but that such contracts will be binding in every case where the minor, but the minor alone will not be prejudiced in his interests; where, according to the expression of the Code, he will suffer no lesion.

A contract made by a minor for the necessaries of life, such as food and clothing, as long as such articles are in keeping with his position and standing in society, will be binding on the parents or proper guardians of such minors. But this rule, I repeat, would apply only in the case of necessaries provided and certainly not in the case of luxuries.

Although extensively protected by the watchful eye of the law, in cases where their interests are in question, on account of youth's inexperience, still minors must not forget that

the law will hold them fully accountable for all acts, deeds or omissions of a criminal and unwarrantable nature.

2o. The second class of persons declared incapable of contracting, are those suffering from derangement of the mind, either through illness, accident, drunkenness or any other cause.

3o. Comes the case of coverture, that is, the legal position of a married woman. She can enter into no valid contract, without the authorization of her husband or of the Court or Judge, in the manner and in the cases provided by law. Concerning married women; when separated as to property, they may without authorization contract for any thing relating to the administration of their own property; but outside of this, the principle of law is that unless they be *marchandes publiques*, that is, carrying on some trade or business with the authorization or, at least, knowledge of the husband, or again, acting as agent or mandatary for the husband, they cannot contract without his special and express authority.

4o. Persons civily dead, i. e., under a sentence of law which deprives them of all civil rights, as in the case of a person condemned to seclusion for life, to death or outlawed, and also in those cases of perpetual vows which are taken in certain religious societies or

orders, when the party therein admitted renounces to all intercourse with the outside world, and becomes towards it as one dead. In these instances again, it is admitted that such persons are relieved from their disabilities, so far as to be allowed to enter into a valid contract for procuring the necessities of life.

5o. Interdicts, for reasons of prodigality, imbecility or madness, i. e., persons who, on account of unreasonable and excessive expenditure of their fortunes or means, or of the unsoundness of their mind, are provided with curators, i. e., a kind of a judicial guardian, whose duty is to watch over the interests of the interdicts.

The incapacity of interdicts for prodigality, like that of minors is established in their favor only. Capable parties contracting with them cannot set it up.

CONSIDERATION. — Is the reason, motive or inducement, upon the strength of which both parties consent to be bound. It may consist in blood relationship, natural love and affection, of something of value to be paid or done, or, of some inconvenience to be suffered.

The consideration must always be conformable to law, morals and public order. The same rule applies to the subject, matter of the contract. The law will never sanction or en-

force a contract contrary to law, morals or good order.

CONSENT.—Is the mutual understanding between the contracting parties. It is either express or implied and must not be unduly influenced or extorted, but be obtained oy frank, honest and open means.

Error, fraud, violence and fear are causes such as will invalidate contracts, when it can be fairly established that the contract is their direct consequence.

There are several kinds of contracts, the only ones which I need mention being the joint contract, where two or more bind themselves to execute or perform a certain thing jointly, that is together; and the several where each of two or more persons for himself agrees that he will perform the whole of it.

I have said that contracts may be either verbal or written; but in all matters exceeding $50.00, and not essentially commercial, although it is not essential to the validity of the contract that it should be in writing, yet writing is in certain cases necessary to the proof of the existence of the contract unless it be admitted by the party against whom it is invoked, excepting where there is a partial deliverv in the case of personal property, and this kind of property, also called moveable property is the one to which commercial

law applies almost entirely; or payment of an account on the price thereof.

CHAPTER II.

Sale of personal prorerty.

A sale is a contract by which one party transfers to another his title and right as owner in a certain thing, in consideration of some price paid by the person acquiring.

Parties competent to contract are here necessary the same as in all other kinds of contracts.

The thing sold must have either an actual or a potential existence at the time of the sale. A horse is sold, which the parties believe to be alive, but which was in fact dead, the contract is void.

An expectation founded upon mere chance may be the subject of sale, such as the product of a certain field.

The contract of sale is perfected by the sole consent of the parties, although the thing sold be yet undelivered; but, of course, the seller has a *lien*, that is a right of retention, on the goods and can withhold them so long as their price is not paid; except where time is given, in other words, when the goods are sold on credit, when the buyer is entitled to immediate possession, unless indeed, subsequently to the sale and prior to delivery, the buyer should

become insolvent, in which event the seller would not be obliged to deliver except for cash or on being sufficiently secured. In the case of goods sold by the measure or weight, etc., the contract of sale is completed only when their quantity has been established by the weighing or measuring of the same; but the buyer can always claim delivery, and in the event of refusal or failure to deliver, he may obtain damages.

The law will enforce all sales, provided every part of the agreement is entered into in good faith and in the absence of all fraud or mistake. The mistake would have to be o' the fact and not of the law, as every citizen is bound to know the latter. However, where a party voluntarily chooses to remain in ignorance, when ample opportunities of information are afforded him, he can hardly expect relief, should he later discover defects.

The law certainly expects every man to be reasonably careful in his dealings; and although it will not allow any one to be cheated into giving assent to any agreement, yet it will not exact disclosure of such defects as are equally open to the observation of all parties.

Bar keepers or liquor dealers of any kind, selling intoxicating liquors to be drunk on the premises to any other but travellers, have in

law no action to recover the price of such liquors.

There can be no contract of sale between husband and wife.

Tutors and Curators cannot purchase the property of those under their care, except in sales by judicial authority ; nor can mandataries or agents purchase such property as is entrusted to them for sale. In fact the same rule applies whenever parties are so situated with regard to property, as to create a strong presumption that they would favor themselves to the prejudice of the public or any particular individual.

The sale of a thing which does not belong to the Vendor is null, excepting in commercial matters when the Vendor acts as agent, etc., or where it afterwards happens to become the Vendor's property.

In the case of a thing lost or stolen, if purchased in good faith at a fair, market, public sale or from traders in things similar, the owner cannot revendicate or reclaim it without reimbursing the buyer the price paid for it. This does not apply to judicial sales when there is no revendication possible.

Should the buyer become insolvent before the goods have been delivered, the seller may retain them, and in the case where they have been shipped, the seller has the right to stop them before they reach destination.

WARRANTY. Is either express or implied. The express may consist of any positive written or oral affirmation made by the vendor at the time of the sale in relation to the goods sold.

Implied warranty consists in the interpretation which law and custom give to the performance of certain acts. For an example, if I sell you an article of any kind, there is implied warranty that I am owner of this article, or at least, that I have a right or title in the same sufficient to allow me to sell it.

CHAPTER III.

Negotiable Paper.

Is a species of personnal property, possessing a peculiar mercantile property found in its transferable quality.

It is in commerce an instrument of the greatest help and importance. It originated chiefly from the customs, usages and requirements of trade.

There are several kinds of such paper. the best known and the most in use being the Bill of Exchange, the Promissory Note, the Check, Bonds, Bills of Lading, etc.

The Bill of Exchange is an order or request from one person to another for the payment of a sum of money, without any condition and at all events to a third party. The necessity of providing some safe and easy way of transmitting money or making payments from one place to another was felt by traders as far back as 1181, and it was found in the Bill of Exchange.

The bill of exchange must necessarily be in writing, payable at all events, and contain the name of the drawer, that is the party writing or making the bill. The person to whom the letter is directed is termed the drawee and the

person in whose favor it is made the payee. New parties may subsequently be added to the bill, as where the payee endorses the same by writing his name on the back to transfer it to another party who becomes the endorsee, more generally known as the holder. He also may do the same thing to another and so on *ad infinitum*.

Other parties may be warrantors upon the face of the bill, as generally expressed *par aval*, as when one puts his name on the bill to strengthen its worth simply as a warrantor, for any one of the parties on the paper; as well as acceptors *au besoin*, to whom the payee is referred in case the intended acceptor's acceptance could not for some reason or other be obtained; and *supra protest*, who accepts to save the credit of the drawer as a mere act of friendship or courtesy.

The bill of exchange can be made payable to the party therein named, to his order, to the drawer's order or to bearer, for it is the great object of commercial paper that it be almost as easily transferable as bank notes, and it is only in that manner that it can facilitate the ends of trade in the way it does, by securing the most perfect, rapid and safe method of transfering the large sums of money such paper represents from one hand to another, from city to city, in fact, from country to country.

If the name of the payee should happen to be left in blank, its legal holder may fill it up. If no time be specified in the bill for its payment, it is held to be payable on demand, and if no place for such payment is specified, it is payable generally.

Bills of exchange are of two kinds: foreign and inland. By foreign is meant one drawn by a person in one country upon one in another country; the Foreign are generally drawn in sets of several parts all of which the drawer is bound to deliver to the payee.

The Inland bill is one drawn by a person of a country upon another also in the same country.

The transfer of a bill of exchange is accomplished by endorsement, when made to order; when payable to bearer, it is of course transferred by simple delivery. The transfer by endorsement is either in blank or in full. The endorsement is in blank when made by the endorser's only writing his name on the back of the bill and no more. This endorser must of course be the person to whose order the bill is made payable.

The endorsement in full is a restrictive one, and occurs when the paper is endorsed as made payable to the endorsee or his order, and then signed by the endorser.

By the first mode of endorsement, the bill, f made payable to order, is after the first

payee or endorsee's endorsement, transferable by mere delivery *ad infinitum.*

By the second, it can only be transferred through the endorsement of the endorsee.

The transfer may de made before or after the maturity of the bill; but with this great difference which no one should ignore, that in the first case the holder acquires a perfect title free from all liabilities and objections which any parties may have against it in the hands of the endorser; while in the other it is open to all the liabilities and objections which could have been raised against it, when in the hands of the former holder. The person receiving the bill before maturity does so upon. the credit of the paper alone, and is not bound to inquire into any equities or defences which might be raised by prior parties. The necessities of commerce require it to be so. But if it be received after due, the matter is altogether changed, for the bill is then disgraced and this gives rise to the presumption that there must have been some reason why it was not duly honored.

Such reason in fact as makes it incumbent upon the party receiving it to look into the merits of this cause or reason. But here as every where else the law exacts good faith.

An endorsement may be restrictive, qualified or conditional, and the rights of the holder under such endorsement, are regulated ac-

cordingly; but no endorsement other than that by the payee can stop the negotiability of the bill. The endorsement may be so worded as to restrain the negotiability of the instrument, but in such case there must be an unequivocal intention to restrain.

ACCEPTANCE.—Bills of exchange payable at sight, or at a certain period of time after sight or after demand must be presented for acceptance. The presentment is made by the holder or in his behalf to the drawee or his representative, at his domicile or place of business, or if the drawee be dead or cannot be found and is not represented, presentment is made at his last known domicile or place of business. If there be also a drawee *au besoin*, presentment must be made to him in the same manner.

By drawing and delivering the bill, the drawer is understood to contract with the payee and every subsequent holder, that the drawee will, upon presentment and demand of payment thereof, accept and pay the bill according to its tenor.

This presentment for acceptance when necessary, must be made within a reasonable time from the making of the bill.

Thr acceptance must be in writing upon the bill. No particular form is necessary. The law holds expressions indicating an intention to pay the bill when due, sufficient. It must

be absolute and unconditional; however, if the holder agrees to a conditional or qualified acceptance the acceptor is bound by it.

By acceptance the drawee becomes the principal debtor and liable towards any *bona fide* holder receiving the bill in the ordinary course of business.

In the case of refusal or inability to accept by the drawee mentioned in the bill, there can be a particular kind of an acceptance known as "Acceptance for honor," which happens when, in order to secure the negotiability of the bill or save the credit of its drawer or of any of the endorsers thereon, some friend steps forward, and with the holder's consent, accepts the bill in the place and stead of the intended drawee. This acceptance only benefits the parties who are subsequent to the one for whose honor it is made. This acceptor for honor is bound to give immediate notice to the party he so accommodates, for this is really an accommation acceptance, of his acceptance as well as to all parties who may be held liable to him on the bill.

When this acceptance for honor is made after the bill has been protested, it is called acceptance *supra protest*.

NOTING AND PROTEST FOR NON ACCEPTANCE. —If the drawee refuses or fails to accept the bill, it may be forthwith protested for non ac-

ceptance, and after due notice of such protest has been given to the parties liable upon the bill, the holder may demand immediate payment of it from such parties exactly as if the bill had become due, and been protested for non payment instead of for non acceptance.

This frees the holder from the obligation of presenting the bill for payment, or if he does so to give notice of dishonor.

The law provides also that instead of protesting for refusal to accept, the holder has the option of having the bill noted for non acceptance only; when no notice to the parties secondarily liable is necessary. Although the student, from what has been already said, very likely understands what is meant by parties secondarily liable, I might as well add here, that the law distinguishes two classes of parties in negotiable paper. Those who are *primarily* liable, who are the real debtors, such as the acceptor in the case of a bill of exchange, and the maker in that of a promissory note; and those who are *secondarily* liable, whose liability is contingent, conditional upon the failure of those primarily liable to pay, such as the drawer and endorser of a bill, and endorser of a note.

I should here also mention another division of negotiable paper into business and accommodation. The former is where the acceptor of a bill of exchange or the maker of a note

is really indebted; and the latter, on the contrary, when there is no indebtedness, the paper being given or accepted simply to oblige, to enable the party to whom it is given to raise money. In the first case, the payee or holder has a right of action against the acceptor or the maker as well as any subsequent party in whose hands the paper may have come; in the second case, those only to whom the paper is transferred for value and in due course of law can exercise this right.

The noting and protest must be done by a Notary Public, and in case the services of none can be procured, any justice of the peace is empowered to do the same.

The only object of these formalities is to secure the holder's recourse against the drawer and endorsers.

PAYMENT.—Every bill of exchange not protested for non acceptance, as already said, must be presented for payment by the holder or in his behalf to the drawee or acceptor, in the afternoon of the third day of its maturity, or after presentment for acceptance if drawn at sight; should this day happen to be a legal holiday, then on the next following juridical day. This presentment must be made wherever the bill is made payable either by indication therein or by qualified acceptance. If it be payable generally, the presentment must be made to the drawee or acceptor, as the case

may be, either personally or at his residence, office or usual place of business; in the case of absence, or of no such places being known, then the presentment can be made at any of such places where the drawee or acceptor was last known to reside, where thea cceptance, or if there be none, where the bill bears date.

Should the maker in the case of a note, or acceptor in that of a bill, be a firm, the demand of payment is made of one of the members. In case of death, the demand is made of their heirs or legal representatives.

Payment of a lost bill of exchange may be recovered upon satisfactory proof of the loss being made by the holder. and by giving security to the parties if the bill be negotiable.

The party paying the bill should be careful to have it delivered up to him, or have his payment endorsed upon it so as to avoid the risk of paying a second time to some one who was a holder before maturity.

Payment of a bill may be enforced by action against the drawee, if he have accepted; against the drawer and endorsers in the event of deshonor, by refusal to accept or pay.

All these parties being jointly and severally liable, they may be included in one suit.

PROTEST FOR NON-PAYMENT.—If not paid when presented for payment, the bill must be protested for non payment on the last day of grace which is, as has been already said, the

third after maturity, and notice thereof be given to any party on the bill whose liability the holder wishes to keep alive; and as in the case of non acceptance, should this formality be omitted, the parties liable other than the acceptor will be discharged. Still the drawer can only avail himself of the want of protest and notice if he can establish that he had duly provided for the payment of the bill.

Protest and notice thereof is rigorously required by the law and nothing but impossibility by inevitable accident or irresistable force will excuse it. It can of course be waived by any party to the bill in so far as his rights are concerned.

The object of the performance of these formalities is to secure full and perfect remedy against drawer and endorsers who are only secondarily liable; their obligation being contingent upon the principal debtor's default to pay. By his action the holder can recover the amount mentioned in the paper with interest and all expenses occasioned by non acceptance and non payment.

CHAPTER IV.

Promissory Notes.

A promissory note is a written promise to pay a certain sum of money absolutely. It must be signed by the party who promises, who is called the maker. His obligations are similar to those of the acceptor of a bill of exchange.

The party to whom the promise is made, in whose favor the note is made, is called the *payee.*

The promissory note, unlike the bill of exchange, is a promise and not an order. Yet although they differ in form, still in the hands of the payee and every subsequent holder, they are precisely alike and are consequently governed by the same principles of law.

The Civil Code of our Province says that: "The provisions concerning bills of exchange apply to promissory notes when they relate:

1o. To the indication of the payee;
2o. The time and place of payment;
3o. The expression of value;
4o. The liability of the parties;
5o. Negotiation by endorsement or delivery;
6o. Presentment and payment;
7o. Protest for non payment and notice,

etc.," which provisions carry the note through most all its phases.

Promissory notes perform as great a part in the business world as bills of exchange and perhaps a greater; for of the two forms of negotiable paper, they are the most in use.

CHAPTER V.

Cheques.

The cheque is a written order upon a bank or banker for the payment of money. It may be made payable to a particular person or to order, or to bearer, and is negotiable in the same manner as bills of exchange and promissory notes. They are payable on presentment and need not be presented for acceptance apart from payment.

Nevertheless if accepted, the holder acquires a direct action against the bank or banker, without prejudice to his claim against the drawer, either upon the cheque in case of refusal to pay by the bank or banker and without protest, or for the debt it represents; in the latter case, after returning it to the drawer with reasonable diligence.

If the cheque be received from any other party than the drawer, the holder may in like manner return it to such party, or he may recover from the parties whose names it bears.

The rules which apply to bills of exchange also apply to a great extent to cheques, for in its form the cheque is very analogous to the bill of exchange; the differences between them being particularly as we have seen:

1o. That cheques are always drawn upon a Bank or banker; 2o. That they are payable on presentment, without days of grace; 3o. That they are not required to be presented for acceptance, but only for payment.

Cheques are not due until presented for payment and can be negotiated at any time previous to that.

They should be presented as soon as possible, for the law says that: If the cheque be not presented for payment within a reasonable time, and the bank should fail between the delivery of the cheque and such presentment, the drawer or endorser will be discharged to the extent of the loss he suffers thereby.

CHAPTER VI.

Interest.

By interest is meant the remuneration or compensation paid by one party to another for the use or detention of his money. It occurs in the case of a loan of a sum of money at a stipulated rate of interest, also on a debt overdue, or from its creation if there is an understanding to that effect. A judgment will most always carry interest from the time the party against whom it is given has been summoned to answer the Plaintiff's demand.

It was for a long time considered to be usury for any one to loan money at a high rate of interest, at all events above that fixed by statute; but now the Courts would not refuse to grant any such interest as might fairly be agreed upon.

The legal rate of interest is generally understood to be six per cent and, if not mentioned, it is the rate collectable. For instance, if a note be payable, let us say at three months from the date it bears without interest and is not honored at maturity, the holder can along with the amount of the note exact interest at six per cent from its maturity.

On running accounts interest is allowed from the demand of payment, which is generally judicially made, that is by summoning the debtor before the Courts; still when the time of credit is limited and there is an agreement either express or implied to pay at a certain time, interest certainly begins to run from the expiration of such time.

Interest allowed on judgments is also at the rate of six per cent, unless it be rendered upon a claim or obligation bearing a different rate according to stipulations.

Compound interest, i. e., interest upon interest, is allowable when there is a contract to that effect, either express or implied.

CHAPTER VII.

Agency.

Agency which is known in our Code as Mandate, is a stipulation wherein a person called the Principal or Mandator commits a lawful business to the management of another who is called the Agent or Mandatary. In a few words, the agent is an authorized person to do some act or series of acts in the name and place of another who is the agent's principal: it is a substitution of the agent for the principal. For it is a recognized principle of law, that: whatever a man can do in his own right, he may generally speaking appoint another to do for him.

Agents are also known under other names according to the business they do, such as the Factor, who is an agent for the sale of property; and the Broker who simply negotiates sales without the property being placed into his hands.

Agency may be express or implied. Express, when there is a special delegation of authority; and implied, when the agent acts to the knowledge and with the apparent consent and approval of the principal.

It is essentially a gratuitous contract, but in general business is oftener than not, undertaken for a remuneration, the amount of which is regulated by usage or by an agreement between the parties.

It may be for a special undertaking or for the management of the principal's affairs generally. But in the latter case, it only comprehends acts of administration. For acts of alienation or which tend to transfer ownership, in real state particularly, the mandate or power must be special and express to that effect.

The agent must never exceed the limits of his mandate, unless it be in things incidental and immediately connected with the affairs he is empowered to administer, and then only if he cannot communicate with his principal.

Subject to the rules concerning them, minors and married women may be agents. I might say that the only disability here is in the case of natural defects either physical or mental.

The agent is strictly and under penalty of damages bound to fulfil the obligations of his mandate faithfully and to the best of his ability, the law will expect him to care for his principal's interests even after the expiration of his authority for a reasonable time, unless it be revoked by the Principal, when the completion of some urgent business or the absence

of his principal or other like causes require it. He is also answerable for any person whom he should substitute to himself in the management of the business to which he is appointed.

So strictly does the law interpret the good faith which should exist in the agent, that it forbids him becoming in any way personally interested in the business he manages; should for instance, the agent's employment be to sell or buy goods for his principal, the Courts would invalidate any sale or purchase which he would make to or from the principal, acting as agent of course

The agent's liability is always construed after his agreement with the principal, and he is answerable to him for all his acts. He is bound to render him a true account of his administration whenever called upon to do so and particularly at the expiration of the mandate.

So long as he acts within his powers, and third parties have ample opportunity to know that he is acting simply as agent, he renders his principal alone accountable towards them, but if he should exceed them, then he alone is answerable, unless he does so to the principal's knowledge who either tacitly or expressly ratifies the act. Should the third party know that the agent is exceeding his powers, then the third party deals with him at his risks; but if in good faith, and when the principal

has given him good cause to believe the agent empowered to act as he does, the principal is then liable to him

The principal is bound to indemnify the agent for all obligations, liabilities, expenses and losses which he might incur when acting strictly within the limits of his powers, as well as to pay the salary due him for his services, for which the law grants him the right of lien or retention upon whatever property of the principal he might have in his possession, however profitable the business confided to him might prove for the principal so long as no fault would be imputable to him.

The agent must be very careful and not forget that when his instructions are explicit, he must strictly follow them, unless such unforeseen necessity or circumstances should arise as would warrant any prudent man in deviating from them, or where such instructions would be contrary to law and order.

In the absence of instructions the agent must persue the accustomed course of that business entrusted to him.

As already stated the agent is bound to use all ordinary attention, skill and care in the execution of his mandate.

A Factor for instance, is liable to a certain extent for the safety of the goods put in his possession and is expected to look after them as carefully as he would after his own.

We have already seen that the principal would be rendered responsible towards third parties by his agent acting within the scope of his authority, he is moreover, liable towards them for the negligence or unskilfulness of the agent while in the execution of his mandate. So closely does the law identify the person of the agent with that of his principal that it even seems to hold the latter responsible for the former's wilfully wrongful acts, unless the principal can satisfactorily establish that he was unable to prevent the act.

I might here add that our Code applies this rule to parents for the acts of their minor children, to tutors and curators for the damages which the parties under their custody might cause; as well as to teachers and patrons for their pupils and apprentices, provided always that they might have prevented the evil.

As already stated, brokers are a class of agents whose particular business is to negotiate purchases and sales between parties. Factors, also known as commission meachants, are agents to buy or sell goods for another, either in their own name or in that of the principal. They can be both parties' agents, that is, in a sale for instance, they can be the seller's as well as the buyer's agent, and bind them both by their acts. The factor can conduct the business either in his own name or in

that of his principal; but if the latter be absent in a foreign country, the factor is personally liable to the third parties with whom he contracts.

From the foregoing principles we understand, that: any person can safely contract with any agent for goods in his possession, or of which he is entrusted with the documents of title, such as bills of lading, warehouse keeper's receipts or orders for delivery of goods etc.

The principal may at any time revoke his agent's mandate, but here it must be remarked, that he cannot do so to the agent's detriment or damage without indemnifying him. This revocation must be made reasonably public, if not, third parties who in ignorance of it have contracted with the agent since it was made, have a full recourse against the principal, whose duty it was to give sufficient notice of the revocation

The agent can also renounce his mandate, after giving his principal reasonable notice of his intention to do so, but must do so at a time when such renunciation will not be injurious to the principal, unless there be a reasonable cause for it; otherwise he will be liable towards him for all damages which he might suffer thereby.

CHAPTER VIII.

Partnership.

Partnership is the relation existing between persons who have agreed to combine their property, labor or skill in some undertaking or business, and to share between them the profits as well as the losses, arising therefrom. It is strictly essential to this agreement that it should be for the common profit of each of the partners who must contribute to it, in all or some of the things stated. The receipt of a share of the profits or of an income varying with the profits made, does not necessarily indicate the existence of a partnership, for this might be simply the salary offered the recipient for his services as servant; but it is perfectly lawful, (and often happens,) for a partner to stipulate that he will simply devote his time, skill and experience to the common undertaking.

As regards third parties, any agreement tending to exclude one or more of the partners from losses, is null.

The business may be carried on under any business-name which the partners choose to adopt, care being taken not to assume any

style already borne or adopted by some other firm.

Partnerships are either Universal or Particular. They are also Civil or Commercial.

Universal partnership may be either of all the property, or of all the gains of the partners. In universal partnership of property, all the property of the partners moveable and immoveable, and all their gains, as well present as future, are put in common; but unless the contrary is expressly stipulated, universal partnerships are presumed to be only of gains.

Particular partnerships are those which apply only to certain determinate objects.

PARTNERSHIPS CONTRACTED FOR A SINGLE ENTERPRISE.—Commercial partnerships are those which are contracted for carrying on any trade, manufacture, or other business of a commercial nature. All others are civil partnerships.

Commercial partnerships are divided into: General, Anonymous, *En commandite* or Limited and Joint Stock Companies.

Before explaining these different kinds of partnership, I will mention and define the different kinds of partners, which are: 1o. the Nominal, who have no actual interest in the business or profits, and therefore are not partners as between themselves, but as they allow their names to be given out to the public as such, and thereby strengthen the credit of the

firm, they render themselves liable towards third persons.

2o. The real, who are in every way truly partners.

3o. The dormant, who also are in every respect partners, but who attempt to evade the obligations of the partnership, by concealing the fact of their interest. So long as they remain unknown they are safe, but the moment their names are disclosed, they become equally liable as the rest of the partners, whether the firm was trusted on the strength of their membership or not.

There is also the Limited Partner, who is simply a contributor in a certain amount to the funds of a partnership in which his liability towards its creditors is limited to the sum contributed. His name does not appear in the firm, nor can he transact business on its account.

General partnerships are those formed for the purpose of carrying on business under a collective or firm name, consisting ordinarily of the names of the partners, or of one of them. All of whom are jointly and severally liable for the obligations of the partnership.

The partners may make such stipulations among themselves concerning their respective powers in the management of the partnership business, as they see fit, but with respect to third persons dealing with them in good faith,

each partner has an implied power to bind the partnership for all obligations contracted in its name, and in its usual course of dealing and business.

Anonymous partnerships are those having no particular name or firm.

The partners' liabilities here are the same as in partnerships under a collective name.

The partnership *En commandite* or Limited partnership, is one wherein there are one or more persons called general partners, and one or more persons called special partners, who contribute in cash payments a specific sum or capital to the common stock. The general partners who are jointly and severally responsible, being alone authorized to transact the business of the firm and bind the same. The special partner is entitled to a certain share of the profits, according to stipulations and is liable for the debts of the partnership only to the extent of his contribution.

Joint Stock Companies are those which, on account of the great number of partners, require the adoption of certain peculiar regulations.

They are formed either under the authority of a royal charter, or of an act of legislature; when they are governed by its provisions, if formed otherwise, they generally come under the same rules as partnerships under a collective name.

The contract of partnership, as well as its stipulations are generally evidenced by articles formally executed, although it can be formed by verbal agreement, and if no time be designated for its commencemont, it takes effect from the date of the contract.

If no mention is made of the period of its duration, it is presumed to be life long, that is, as long as every one of the partners live.

I must here mention, that our Code makes it a strict obligation for partnerships formed to carry on certain trades and traffics, to deliver to the Protonotary of each district, and to the Registrar of each county in which they carry on such business, a declaration in writing, stating the object of their partnership, the names of its members, and the time from which it dates; the omission to perform this duty will subject the parties contravening to certain penalties.

The object of this provision of the law, being to afford the public a certain protection, a source from which they can derive such information as will enable them to ascertain who they are dealing with, when transacting business with such firms.

No partner, whether he has signed or not this declaration, will be deemed to have ceased to be such untill a new declaration, showing the change, has been made.

Partners whose names would be omitted in the declaration could not thereby disclaim liability for any of the firm's obligations.

The moment any one by conduct, or by words written or spoken, leads another to believe that he is a member of the firm, he renders himself responsible to him as such.

Each partner is bound to contribute to the partnership all he has agreed to, and owes interest upon the same from the day he is in default of paying in his share; being liable as well towards his co-partners for all damages he might cause them by such default, which is also a valid reason for the dissolution of the partnership.

As well as the capital promised, every member of the partnership must devote to the common undertaking, the skill and industry which he has agreed to contribute without the least deviation.

The principle being that the contract once formed must be strictly adhered to, and can only be rescinded or varied by the consent of all the partners and not otherwise, and that the partners are bound to carry on the business of the firm for the greatest common advantage; to be true and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives, when reasonably requested. So that if a partner,

without the knowledge and consent of his co-partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all the profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

To show to what extent the law expects the faithfulness of co-partners to be carried out botween them, I will quote article 1843 of our Civil Code which says, that: "When a part-"ner is creditor individually of a person who "is also indedted to the partnership, and both "debts are actually payable, the imputation of "any payment recéived by him from the "debtor is made upon both debts in proportion "to their respective amounts, although by the "receipt he may have imputed it upon his "private debt only; if by the receipt he im-"pute the payment wholly upon the partner-"ship's debt, such imputation is to be main-"tained."

Each partner is liable to the partnership for damages caused by his fault, and on the other hand, can recover moneys disbursed and be indemnified for obligations contracted in good faith for the firm.

When there is no agreement concerning the shares, the partners participate equally in the profits and losses.

In the absence of any special stipulation as to management of the firm business, it is pre-

sumed that its members have mutually given each other authority to manage, and the acts of one bind the others, provided they do not object before their completion.

Each partner is entitled to the use of the firm's property provided he uses the same reasonably, and in a manner unprejudicial to its interests or of that of his co-partners.

Each partner may be compelled to contribute towards the expenses necessitated for the preservation of the common property.

In the case of real estate belonging to the partnership no alteration can be made thereto without the consent of all the co-partners.

Any one of the partners may, if he chooses, associate with himself an outsider in his own share of the partnership; but cannot make him a member of the firm.

In commercial partnerships, partners are jointly and severally liable, i.e., each not only for his share, but for the whole of the debts of the firm. It is not so in non-commercial, where the partners are only jointly, i.e., each for his share of the debts.

Each partner who does any act necessary or usually done in carrying on business, such as the partnership carries on, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose. For as regards the rights of third persons against the partnership, it is a general rule, that each

partner is the accredited agent of the rest, whether he be active, nominal or dormant; and has authority as such to bind them either by simple contracts respecting the goods or business of the firm, or by negotiable instruments circulated in its behalf to any person dealing *bona fide*. Let it be well noticed, that here as everywhere else the law will expect good faith, for if a third person deals with a member of the firm; knowing that the latter exceeds his authority, no recourse will lie against the partnership unless the partnership benefits by this act, and also where as already stated, no one or more partners have in a sufficiently public manner been appointed to conduct the affairs of the firm, when no others but they can bind it, and these only within the scope of the authority conferred on them expressly, or by implication.

Where a partner engages the firm in a matter evidently unconnected with it and without his co-partners' assent, the firm will not be bound.

If all or any of the partners give notice that the firm will not be bound by acts or by some class of acts done in the name of the firm, they cannot be bound by them if done with a person to whose knowledge the notice has come.

LIMITED PARTNERSHIP.—In limited partnership, the partners are obliged to make and severally sign a certificate containing:

1o. The name or firm of the partnership;

2o. The general nature of the business to be carried on;

3o The names of all the general and special partners, distinguishing which are general and which special, and their usual place of residence;

4o. The amount of capital stock contributed by each special partner;

5o. The period at which the partnership commences and that of its termination.

Such certificate is to be made before a notary who will duly attest it, when it must be fyled with the Protonotary of the Superior Court for the District and the Registrar of the County where the partnership has its principal place of business, for registration in a book open to public inspection.

The partnership will not be deemed formed antill the certificate is made, fyled and recorded in the above manner.

During the continuance of the partnership no special member can withdraw from it the whole, or any part of the amount he has contributed to the partnership fund; he can annually receive lawful interest on the same, as long as it does not affect the amount of his contribution, and he may also receive his portion of the profits.

The general partners are the real partners, the active business parties in the partnership,

and meet the liabilities of partners generally.

They are liable to account to each other and to the special partners for the management of the firm's business, as ordinary partners under a collective name.

In case of insolvency, the special partners have no claim against the partnership until all its other creditors have been satisfied.

Limited partnerships, I must not omit to say, cannot be formed to carry on the business of banking or insurance, and their dissolution cannot take place but at the time stated in the certificate required for their formation, unless certain regulations required by law are complied with; and which are: a notice fyled in the office or at the place where the certificate mentioned was registered, and publication of the same notice during a certain time. in certain papers.

JOINT STOCK COMPANIES. — In this species of partnership which is usually formed, in this Province, under a special statutory charter or under a certain act known as: the "General Joint Stock Companies Act." In either of which cases the liability of the shareholders does not exceed or go beyond the mere loss of the stock held by them, should the Company become insolvent. When not coming under any of these cases, then the partners' liabilities toward third persons are generally gov-

erned by the same rules and principles which regulate the common commercial partnership.

In these partnerships, the stock is generally divided into shares, made transferable by assignment or delivery, and the business is conducted by a choosen board of directors. Under certain restrictions any partner may transfer his shares, but no partner acts personally in the affairs of the Company, the execution of their business being entrusted to officers for whom the partnership is responsible, though the superintendence of such officers is frequently committed to directors choosen from the body at large.

Partnership is dissolved by various causes, such as by the expiration of the time fixed for its duration; by the loss of its property or the accomplishment of its object, bankruptcy, death, etc.

Those which are not limited as to duration can be dissolved at the will of any one of its members, by his giving notice to his co-partners of his intention to withdraw, provided he does so in good faith and at such a time as will not be unfavorable to the partnership.

A failure to fulfil his duties, gross misconduct or physical or intellectual infirmity on the part of one of the partners, will also be a cause of dissolution of the partnership. The death of one of the partners will also be a

cause for dissolution, unless there be some provision to the contrary.

After dissolution, excepting for the completion of business begun during its existence, the partners' powers to act for the partnership cease, still a partner acting in ignorance of the dissolution and in good faith, binds the others.

Upon dissolution, each partner or his legal representatives may demand an account and division of the partnership property.

The partnership creditors have a privilege upon its property for their claims, and have a right to be paid out of it in preference to its members, private creditors also have a recourse against the partners' private property, when that of the firm is not sufficient to cover their claims, but then they only rank after such partners' private creditors.

CHAPTER IX.

Lease and Hire.

This is a contract wherein a price or compensation is to be given for the use of personal property, or for labor, or both combined. There is also the hire of houses and farms which is to a certain extent governed by rules particular to such contract.

In the lease or hire of things, one party called the Lessor grants another party called the Lessee or hirer, the use of a thing for a certain time, in consideration of a certain sum or rent. In that of labor or services, the lessor undertakes to perform certain work for the lessee, on the same condition, i.e., for consideration.

Our Code says, that: "The principal kinds "of work which may be leased or hired are:

"1o. Personal services of workmen, servants "and others;

"2o. The work of carriers, by land and by "water, who undertake the conveyance of "persons or things;

"3o. That of builders who undertake work "by estimate or contract."

In the first case, the employer is bound to pay the price stipulated, and conform to all

the stipulations of the agreement with his employee.

The workman on his side must perform his work faithfully, diligently and well, and also act up to the agreement.

In the case of carriers who undertake the conveyance of persons or things, such as proprietors of railroad cars, steamboats, canal boats, stage coaches, as well as truckmen, teamsters, carters, etc., who make it their business to carry people or goods from one place to another for compensation; the law declares them, in the case of property delivered to them for transportation, responsible for loss or damage caused in any way whatever, excepting where a theft would be committed by force of arms, or the damage would happen through inevitable accident or the owners own acts of carelessness, or from defects in the thing itself.

The carrier may qualify his liability by a general notice to all who employ him, of any reasonable requisition to be observed on their part in regard to the manner of delivery and entry of goods, etc., but he cannot limit his responsibility imposed upon him by law, for his own gross neglect or misconduct. This responsibility begins when the goods are delivered to the carrier, or to his proper servant, authorized to receive them for carriage. They are bound to carry for all persons that apply,

unless they have good reasons to refuse; but they are not obliged to receive goods which it is not their custom to carry, nor when their means of conveyance are all taken up, or before they are ready to depart.

They may demand their charges in advance, and these charges, for the same service, must be the same to all customers.

The delivery of the goods at the station or point where shipped, must be done within the stipulated time, if any is stipulated, and at least according to the ordinary and reasonable course of business, under penalty of damages, unless there is some reason of fortuitous event, or irresistible force.

The carrier is neither bound to deliver to the consignee personally, nor to give notice of the arrival of the goods, unless they arrive before or after time.

The reception of the goods transported and the payment of freight upon them, without protest, extinguishes all right against the carrier; unless there should be damage or loss such as could not have been known or discovered at the time when such receipt or payment was made, in which case a claim must be fyled immediately the loss or damage is ascertained.

The goods shipped are generally mentioned and described in a document or paper called the bill of lading, and which is evidence of the

contract entered into by the carrier and consignor.

Carriers of passengers are only liable for their negligence. Their undertaking being that as far as human care and foresight goes they will carry safely.

But a very small degree of negligence is sufficient to render them liable.

They are liable in damages if their trains do not start according to time table. But special damages must be proved.

They must carry all that offer unless they have some reasonable excuse. For instance they are not bound to receive passengers who refuse to conform with reasonable regulations, or are not of a quiet and peaceful behaviour, or for any reason are not fit associates for the other passengers : as if affected by contagion, or in any way offensive in person or conduct.

Passengers must produce their tickets when they are called for by a conductor having the official cap and badge, who may put off the train a passenger refusing to do so; but the carrier's servants cannot arrest a passenger for non-production of his ticket.

Passengers must be allowed reasonable time to alight at destination.

The carrier is bound to give warning or signal on leaving stations, and his neglect to do so will subject him to damages towards parties left behind thereby.

In the case of stoppage by snow blockade, the carriers are bound to make all reasonable exertion to forward the passengers.

Carriers of passengers are liable as common carriers for their ordinary baggage, and a check is evidence against the carrier of the receipt of such baggage. Checking however, is but an extra precaution to prevent the baggage being given to the wrong persons, as the carrier will be in the same manner responsible for the loss of unchecked articles.

If a check be refused when demanded, the carrier will be liable to a fine.

If the passenger choose to take the exclusive control of his own baggage, the carrier will not be liable for the loss, unless caused by the carrier's own negligence or fault.

The responsibility of the carrier for a passenger's baggage, after it has reached destination, continues until the owner has had reasonable time and opportunity to take it away. After that, the carrier is only bound to give it tne same care as any prudent man would to his own property and no more.

The carriers would not be held liable for large sums of money or other securities; or for gold, silver, precious stones or other articles of an extraordinary value, contained in any package received for transportation, unless it is declared to them that the package contains such valuables.

THE HIRE OF WORK BY ESTIMATE AND CONTRACT.— Is that wherein a party undertakes the construction of a building or other work, as a whole, for a fixed price. It may be agreed that this party shall furnish labor and skill only, or that he shall also furnish materials.

In the former case the loss of the thing worked upon, before the work is perfected, falls upon the lessee; and as for the work itself, if it is to be perfected and delivered as a whole, and the thing perish before the work has been received, the owner not being in default of so receiving it, the workman has no claim, unless the loss is due to some defect in the materials or the owner's fault. In the latter case if the workman's contract is to furnish and deliver the work as a whole its loss before delivery falls upon him; again unless it is caused by the lessee's fault or he should be in default of receiving it.

It is fitting here to mention a few important provisions of law relating to the building of houses. Article 1688 of our Code states that: If a building should wholly or partially perish, within ten years from the time it was erected, from some defect in the construction, or even from the unfavorable nature of the ground, the architect superintending the work, and the builder will be held jointly and severally liable for the loss.

If the architect only furnishes the plan and

does not superintend the work, he will then only be liable for such loss as might happen through defects in the plan.

In a case of St-Louis vs Shaw it was decided that: " A builder is liable for damage occa- " sioned to his work by frost, if he agreed to " execute the work at a season when it was " liable to injury from that cause."

A builder undertaking to put up a building or perform some other work by contract upon a plan and specifications, for a certain price, cannot claim additional charges for any deviation from such plan and specifications, or for any increase in the labor or materials, unless such changes are authorized in writing and their value be fixed upon with the employer.

Architects, builders and other workmen have for the payment of their labor, as well as for the materials they furnish, a privilege upon the work they construct.

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